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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 STATE OF CALIFORNIA,

15 Plaintiff,

16 v.

17 UNITED STATES DEPARTMENT OF JUSTICE
18 and OFFICE OF JUSTICE PROGRAMS,

19 Defendants.
20

Case 3:18-cv-00805-JCS

**STIPULATION AND ~~PROPOSED~~
ORDER RE: SETTLEMENT AND
DISMISSAL WITH PREJUDICE**

21 Plaintiff State of California (“plaintiff”) and defendant United States Department of Justice and
22 Office of Justice Programs (“defendants”) hereby enter into this Stipulation and [Proposed] Order Re
23 Settlement and Dismissal With Prejudice (“Stipulation”), as follows:

24 WHEREAS, on February 7, 2018, plaintiff filed its Complaint under the Freedom of Information
25 Act (“FOIA”), 5 U.S.C. § 552, as amended;
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1 WHEREAS, plaintiff and defendant wish to avoid any further litigation and controversy and
2 compromise fully any and all claims and issues that have been raised, or could have been raised in this
3 action;

4 NOW, THEREFORE, in consideration of the mutual promises contained in this Stipulation, and
5 other good and valuable consideration, receipt of which is hereby anticipated, the parties agree as
6 follows:

7 1. Defendant shall pay to plaintiff the amount of twenty-two thousand five-hundred dollars
8 (\$22,500.00) in full and complete satisfaction of plaintiff's claims for attorney's fees, costs, and
9 litigation expenses under the FOIA in the above-captioned matter. This payment shall constitute full
10 and final satisfaction of any and all of plaintiff's claims for attorneys' fees, costs, and litigation expenses
11 in the above-captioned matter, and is inclusive of any interest. Payment of this money will be made by
12 electronic funds transfer, and plaintiff's counsel will provide the necessary information to defendant's
13 counsel to effectuate the transfer. Defendant will make all reasonable efforts to make payment within
14 sixty (60) days of the date that plaintiff's counsel provides the necessary information for the electronic
15 funds transfer and this Stipulation is approved by the Court, whichever is later, but cannot guarantee
16 payment within that time frame.

17 2. Upon the execution of this Stipulation, plaintiff hereby releases and forever discharges
18 defendants, any of defendants' officers, employees, agents, successors, or assigns, and the United States
19 of America from any and all claims and causes of action that plaintiff has asserted in this litigation in the
20 above-captioned matter, including but not limited to all past, present, or future claims for attorneys' fees,
21 costs, or litigation expenses in connection with the above-captioned litigation.

22 3. The provisions of California Civil Code Section 1542 are set forth below:

23 "A general release does not extend to claims which the creditor does not know or suspect to exist
24 in his favor at the time of executing the release, which if known by him must have materially affected
25 his settlement with the debtor."

26 Plaintiff, having been apprised of the statutory language of Civil Code Section 1542 by its
27 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and all
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rights it may have pursuant to the provision of that statute and any similar provision of federal law. Plaintiff understands that, if the facts concerning any liability under FOIA or liability for attorneys' fees, costs, or litigation expenses are found hereafter to be other than or different than the facts now believed by it to be true, the Stipulation shall be and remain effective notwithstanding such material difference.

4. Execution of this Stipulation and its approval by the Court shall constitute dismissal of this case with prejudice pursuant to Fed. R. Civ. P. 41(a).

5. The parties acknowledge that this Stipulation is entered into solely for the purpose of settling and compromising any remaining claims in this action without further litigation, and it shall not be construed as evidence or as an admission on the part of defendant, the United States, its agents, servants, components, or employees regarding any issue of law or fact, or regarding the truth or validity of any allegation or claim raised in this action, or as evidence or as an admission by the defendant regarding plaintiff's eligibility for or entitlement to attorneys' fees, costs, or other litigation expenses under FOIA. This Stipulation is entered into by the parties for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation. This Stipulation shall not be used in any manner to establish liability for fees or costs in any other case or proceeding involving defendant. This Stipulation is understood not to preclude or prevent plaintiff from seeking through the Freedom of Information Act, or other means, records not sought in the Freedom of Information Act request that gave rise to this action.

6. This Stipulation is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

7. If any provision of this Stipulation shall be held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

8. This Stipulation shall constitute the entire agreement between the parties, and it is expressly understood and agreed that this Stipulation has been freely and voluntarily entered into by the parties hereto. The parties further acknowledge that no warranties or representations have been made on any subject other than as set forth in this Stipulation.

9. The persons signing this Stipulation warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the Stipulation.

10. This Stipulation may not be altered, modified or otherwise changed in any respect except in writing, duly executed by all of the parties or their authorized representatives.

11. The Stipulation may be executed in counterparts and is effective on the date by which both parties have executed the Stipulation.

12. This Court may retain jurisdiction for the sole purpose of enforcing this Stipulation.

SO STIPULATED AND AGREED.

Dated: August 12, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
SATOSHI YANAI
Supervising Deputy Attorney General
SARAH E. BELTON
LEE I. SHERMAN
Deputy Attorneys General

/s/ Sarah E. Belton
SARAH E. BELTON
Deputy Attorney General
Attorneys for Plaintiff State of California

Dated: August 12, 2019

David L. Anderson
United States Attorney

/s/ Kimberly A. Robinson
KIMBERLY A. ROBINSON
Assistant United States Attorney
Attorneys for Defendant

ECF ATTESTATION

In accordance with Civil Local Rule 5(i)(3), I, Kimberly Robinson, attest that I have obtained concurrence in the filing of this document from the other signatory listed here.

~~PROPOSED~~ ORDER

STIPULATION AND ORDER RE: SETTLEMENT AND DISMISSAL WITH PREJUDICE
CASE NO. 3:18-CV-00805-JCS

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 DATE: August 13, 2019

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The Honorable Joseph C. Spero
United States Magistrate Judge

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CASE NO. 3:18-CV-00805-JCS